THE CANADIAN INDUSTRIAL DISPUTES INVESTIGATION ACT

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In laying a statement concerning the origin and operation of the Industrial Disputes Investigation Act 1907 before the readers of this publication, who, it may be presumed, are very generally citizens of the United States, it may not be out of place to dwell for a moment on the essential differences, from the legislative point of view, between the United States and its northern neighbor; the reader may be thereby enabled the better to appreciate the political atmosphere of environment of the Canadian law and to estimate how far this may affect the question of the applicability of the measure to other political systems.

The government of Canada, like that of the United States, is federal in character and based on a written constitution. Under the letter of its constitution, the Dominion possesses relatively less power than the American constitution gives the government of the United States; in practice, owing to the greater elasticity of its political system, which is modeled closely on that of Great Britain, the federal power in Canada is considerably stronger than that of the United States, excluding, of course, all relation to such functions as are, in the case of Canada, exercised by the British government. The chief difference in the political systems of the two countries lies in the acceptance in Canada, as in England, of the doctrine of ministerial responsibility. This theory requires the heads of the various departments of the Canadian government—who are also the political party leaders—to occupy seats in Parliament, compels them to keep in the closest touch with the parliamentary representatives of the party in power, and affords them in most cases a greatly longer period of political life and influence and a proportionately larger scope for the play of personality, than is possible in the case of the members of the United States Cabinet, who are without seats in either branch of the legislature, and whose political lives seldom extend beyond the

term of the President whom they serve as administrative assistants or auxiliaries. It is not material to the purpose of the present paper to determine which of the two systems may ultimately and in the largest sense prove the better; it is intended only to indicate the influence which tends to give the federal power in Canada a strength and elasticity with which the United States system cannot be invested. Whether or not these conditions make for the ultimate good of the community to be governed, is a separate proposition; but there can be no doubt that when the question at issue is one which touches that borderland, or, as it has been called, "twilight," that lies between or jointly affects federal and local jurisdiction, the Canadian system gives the advantage to the federal power.

So it is that in the case of legislation relating to industrial disputes, although there is theoretically little difference in the powers in this direction of the two governments under comparison, it has yet been possible to enact in Canada a federal measure which may not be regarded as falling within the sphere of federal jurisdiction in the United States.

With this brief and inadequate comment on the difference between the political systems of the two countries concerned, we may proceed with a more direct discussion of the subject of the paper. The first Dominion statute dealing directly with the question of the settlement of industrial disputes was that of 1900, known as the Conciliation and Labour Act. This act, by virtue of which also the Department of Labour of Canada was itself established, was modeled closely on the Conciliation Act of Great Britain. Under its terms the department was enabled, with the consent of the parties concerned, to intervene with advantage in numerous industrial disputes. The intervention was effected, however, by the Deputy Minister of the Department in person, and not by means of conciliation boards after the method for the most part followed under the English Act and, it may be remarked, contemplated under the Canadian Act; sentiment has not, in the United States or Canada, favored the growth of voluntary conciliation boards as in the industrial districts of Great Britain.

While many disputes were, and might have continued to be, amicably arranged under the terms of the act in this way, it was obvious that many occasions might arise where the services of departmental officials would be unavailable or inadequate for the

settlement of industrial disputes, and, apart from other necessities, some further development of the law of 1900 would have been desirable and natural in the ordinary course of events. In 1903, the Railway Labour Disputes Act was enacted, which permitted the establishment of a board of conciliation in the case of a railway dispute when one of the parties to such a dispute applied for the same; this was, of course, a step further than the Conciliation and Labour Act went, but the right to strike or lockout, instead of resorting to the method of adjustment provided by statute, was not affected. A further advance was no doubt hastened by means of a serious object lesson in the winter of 1906-07. Throughout nine months of the year 1906 a strike had prevailed in coal mines located at Lethbridge, Alta., colleries which supplied fuel to a large district of the western prairie country; the strike continuing until the approach of winter, serious apprehension came to be felt as to the supply of fuel. Eventually in mid-November, the Prime Minister of the Province of Saskatchewan requested the intervention of the Department of Labour. The Conciliation Act, it should be said, permitted the intervention of the department only by consent of both parties, and in the case of this coal mining dispute the department had been informed by the employers that they were averse to intervention. The demand for intervention being now made in the public interest and by the leader of a provincial government, it was considered proper by the department to take action. Mr. W. L. Mackenzie King, the Deputy Minister at that time, immediately proceeded to Lethbridge, and after considerable negotiation succeeded in securing an agreement between the coal company and its employees, the alarming situation in reference to the fuel supply having an appreciable influence in bringing about a more conciliatory attitude in the case of both parties. It was as the outcome of this dispute, and because of recommendations made by the Deputy Minister of Labour in his report of the enquiry into the dispute that the Industrial Disputes Investigation Act was enacted somewhat later in the same winter of 1906-07.

Hitherto, the only alternative to conciliation as a method of adjusting industrial disputes had been compulsory arbitration, which, of course, finds vogue in the Australasian states. As an experiment in social legislation, compulsory arbitration in these countries has been a matter of surpassing interest to students of

economic problems, but it is not yet clear that this legislation is even substantially effective. The period during which compulsory arbitration has ruled in these countries has been on the whole one of rising prices and rising wages, and the outcome of enquiries into disputes has usually been the increase of wages paid to employees. In spite of this, there have been numerous strikes, and the enforcement of the penalty in each case has been found a matter of extreme difficulty, if not of admitted impossibility. The experiment in compulsory arbitration is, moreover, of too limited a character, both as to time and territory, and the industrial conditions of the territory covered have been of too exceptional a character, to allow of the test so far made to be regarded, especially at this distance from the scene of action, as decisive, whether for or against the principle. It is impossible to say with any preciseness what may have been the result of the compulsory feature of the law as a preventive of industrial strife. It is well also to bear in mind, in considering the cases of Australia and New Zealand with regard to legislation of this nature, that these countries are in a position of peculiar independence and even isolation in industrial matters, differing widely in this respect from the industrial countries of Europe and North America, which are all keen competitors one with another. The view gradually formulated in the Department of Labour of Canada, and apparently endorsed by the Canadian public, was that industrial disputes should be separated into two classes, those in which the average citizen is directly affected or liable to be affected in his own person, so that the grievance may relate to an entire community; and those in which the average citizen is only remotely or indirectly concerned. A strike of coal miners, railway men or telegraph operators, of gas or electric light fitters or of street railway employees may be, for instance, the means of bringing confusion and disaster on an entire community; a strike in a cotton mill or a shoe factory, on the other hand, affects the printer, plumber or professional man, the general public in fact, only so far as it may serve to depress commercial conditions in a particular district. On this point, the Deputy Minister of Labour in his report on the Lethbridge mines difficulty, remarked as follows:

> When it is remembered that organized society alone makes possible the operation of mines to the mutual benefit of those engaged in the work of production, a recognition of the obligations due society by the parties is

something which the state is justified in compelling if the parties themselves are unwilling to concede it. In any civilized community private rights should cease when they become public wrongs. Clearly, there is nothing in the rights of parties to a dispute to justify the inhabitants of a province being brought face to face with a fuel famine amid winter conditions, so long as there is coal in the ground, and men and capital at hand to mine it. Either the disputants must be prepared to leave the differences which they are unable to amicably settle to the arbitrament of such authority as the state may determine most expedient, or make way for others who are prepared to do so.

What I know of conditions in the Canadian West leads me to believe that the labour troubles in the mines which this country has been forced to witness during the present year, will not be without repetition, at some future time, unless, and this, I fear, is improbable, the attitude of the parties towards each other becomes vastly different from what it has been in the past, or some machinery is devised by the state—either the federal or provincial government—whereby the parties will be obliged to refer to an impartial tribunal such differences as failing an amicable adjustment, are likely to lead to a lockout or strike.

It may be well here to include the precise recommendation of Mr. Mackenzie King on the question of legislation, since the same embodied the basis of the law subsequently enacted. Mr. King's report closed with the following sentences:

The purpose of Parliament in enacting both the Conciliation and the Railway Disputes Act might, it seems to me, be considerably furthered were an act, applicable to strikes and lockouts in coal mines, similar in some features to the Railway Labour Disputes Act also enacted. Inasmuch as coal is in this country one of the foremost necessaries, on which not only a great part of the manufacturing and transportation industries, but also, as the recent experience has shown, much of the happiness and life itself depends, it would appear that if legislation can be devised, which, without encroaching upon the recognized rights of employers and employees, will at the same time protect the public, the state would be justified in enacting any measure which will make the strike or lockout in a coal mine a thing of the past. Such an end, it would appear, might be achieved, at least in part, were provision made whereby, as in the case of the Railway Labour Disputes Act, all questions in dispute might be referred to a board empowered to conduct an investigation under oath, with the additional feature, perhaps, that such reference should not be optional, but obligatory, and pending the investigation and until the board has issued its finding the parties be restrained, on pain of penalty, from declaring a lockout or strike.

In view of past experience and the present situation, I would, therefore, respectfully recommend that the attention of Parliament be, at as early a date as possible, invited to a consideration of some such or other measure

with a view to preventing a possible recurrence of an experience such as this country has been forced to witness during the past month, and of promoting in the interests of the whole people the cause of industrial peace.

With regard to the respective proportions numerically of strikes in the domain of public utilities and in other classes of labor respectively, the experience of Canada had shown that the public utility class involved a large proportion of the total number. Taking the six years prior to the period when the new legislation was recommended, it was found that the total number of work people affected by strikes in Canada was 142,027, of which exactly one-third represented disputes in mining, transportation, street railways, telephony, and telegraph. The Deputy Minister's recommendation was subsequently elaborated into a bill which was presented to Parliament by the then Minister of Labour, the Honorable Rodolphe Lemieux, during the session of 1906-07, and having passed through both Houses became law on March 22, 1907. The fact that the bill was piloted through Parliament by the Honorable Mr. Lemieux as Minister of Labour has led to the measure being widely known as the "Lemieux Act." As will have been gathered from the foregoing quotations from the Deputy Minister's report, the principal feature of the measure was the provision that a lockout or strike might not legally take place in connection with any mining or public utility industry until after an investigation had been made into the subject of dispute and every reasonable effort had been made to bring the parties concerned to an agreement.

It is not perhaps necessary to make more than a brief reference to the machinery of the act. The board before which the compulsory enquiry takes place is composed of three persons, one recommended by each of the disputing parties and appointed by the Minister, the third recommended jointly by the two members first appointed, or if a joint recommendation from them is impossible then the third member is selected and appointed by the Minister. If either party fails to nominate a person to the board within the period of five days after being requested by the Minister to do so, or within such extension of that period as the Minister may, for reasons stated, allow, the Minister is then required to make the necessary appointment without a recommendation, though it is obvious that in such a case one of the leading factors in conciliation is lacking. The act further prescribed that thirty days' notice should

be given in the case of either employer or employees before any change affecting wages or general conditions of work could go into effect. It should be noted that during the recent session of Parliament this last provision of the act was amended so as to provide that such changes may not take place "until the dispute has been finally dealt with by a board." Application forms are supplied by the department on request, though it is not necessary that applications should be confined to such forms, but the application must be, in any event, accompanied by a statement setting forth (1) the parties to the dispute; (2) the nature and cause of the dispute, including all claims and demands made by either party on the other to which exception is taken; (3) an approximate estimate of the number of persons affected; and (4) the efforts made by the parties themselves to adjust the dispute. The law requires further that the application should be accompanied by "a statutory declaration setting forth that failing an adjustment of the dispute or a reference thereof by the Minister to a Board of Conciliation and Investigation under the act, to the best of the knowledge and belief of the declarant a lockout or strike, as the case may be, will be declared, and that the necessary authority to declare such lockout or strike has been obtained." This last provision has been quoted somewhat fully because the act has been in this respect also the subject of a slight modification during the recent session of Parliament. Representations had been made repeatedly by railway men to the effect that in obtaining the authority to declare a strike or lockout over a line of railway several thousand miles in length, much expenditure of money and time was necessitated, and that the act in this respect bore severely on the class of labour indicated. The act was therefore amended in this respect so as to provide that where a dispute concerned employees in more than one province there should be an alternative procedure free from these objections. So that both parties to the dispute may be made acquainted with the proceedings taken under the act at the earliest moment possible and all unnecessary delay prevented, the applicant for the establishment of a board is required to send to the other party to the dispute a copy of the application at the same time the latter is transferred to the department, and the second party to the dispute is similarly required to prepare without delay a statement in reply and forward the same to the department and to the other party to the dispute. The act is

precise in indicating who shall be regarded as properly representing the various parties making application for the establishment of boards. Upon the establishment of a board, the department is required to forward to the chairman a copy of the application received and of the statement received in reply. In the course of the investigation that follows the board may make all suggestions and do all such things as it deems right and proper for inducing the parties to come to a fair and amicable settlement of the dispute, and if a settlement of the dispute is reached by the parties during the course of its reference to the board, a memorandum of the settlement is to be drawn up by the board and signed by the parties and may be made binding if the parties agree as provided by a subsequent section of the act, and a copy of the memorandum, with a report on the proceedings, is to be forwarded to the Minister. If a settlement of the dispute is not arrived at during the course of its reference to the board, the board is required to make a full report thereon to the Minister, and make such recommendation as it sees fit for the setttlement of the dispute; and when it is deemed expedient to do so, is also to state the period during which the proposed settlement shall continue in force and the date from which it shall commence. This report is to be sent to the registrar, and similarly, a minority report may be made by a dissenting member of the board. The board is invested with all necessary powers for summoning and enforcing the attendance of witnesses, the administering of oaths and otherwise, so far as may be necessary to a full investigation of the matters brought before it. The board has further the right to investigate and to allow those whom it may indicate to investigate all books, documents, etc., brought before the board, but the information contained therefrom shall not, except in so far as the board deems expedient, be made public. The act makes all necessary provision for the payment of witnesses, and for imposing penalties where the summons or order of the court has been disobeyed or where any person may be guilty of contempt to the board. The board is further invested with power to enter or to authorize others to enter any premises associated with the dispute which has been referred to it, and may there pursue its investigation.

Any party to a reference may be represented before the board by three, or less than three persons designated for the purpose, or by counsel or solicitor where allowed, and such counsel or solicitor

shall be entitled to appear or be heard before the board only with the consent of the parties to the dispute, and, notwithstanding such consent, the board may decline to allow such appearance.

Members of the board must be British subjects, though not necessarily residents of Canada. The sittings of the board are fixed as to time and place by the chairman, and the proceedings conducted in public, unless the board of its own motion or by request of any party to the dispute direct that they be held in private. The board may at any time dismiss any matter referred to it which it deems frivolous or trivial; also it may, with the consent of the Minister of Labour, employ any competent experts or assessors to examine the books or official reports of either party and to advise upon any technical or other matter material to the investigation.

The act provides for the adequate payment of the members of the board during the time they are employed on the task in hand, also for their necessary traveling expenses, and further expressly prohibits the acceptance by any member of the board of any perquisite or gratuity apart from his remuneration by the government on account of any matters brought before the board and makes the acceptance of such perquisite or gratuity an offence punishable by a fine not exceeding one thousand dollars. The compensation for members of the board was originally placed at twenty dollars a day for the chairman and fifteen dollars a day each for other members. During the recent session of Parliament, however, the act was amended by increasing the fee in the case of each member of the board to twenty dollars daily.

The penalties prescribed by the act are as follows: Any employer declaring or causing a lockout contrary to the provisions of the act becomes liable to a fine of not less than one hundred dollars, nor more than one thousand dollars, for each day or part of a day that such lockout exists; while any employee who goes out on strike contrary to the provisions of the act becomes liable to a fine of not less than ten dollars nor more than fifty dollars, for each day or part of a day that such employee is on strike; also, any person who incites, encourages, or aids in any manner any employer to declare or continue a lockout, or any employee to go or continue on strike contrary to the provisions of the act, shall be guilty of an offence and liable to a fine of not less than fifty dollars and not more than one thousand dollars. It may be added that the act does not con-

template that the Department of Labour should institute proceedings when the act is believed to be infringed; any individual may lay the information necessary.

The text of the award of findings of the board in each case is published in the "Labour Gazette," the official monthly publication of the Department of Labour, and the findings received during a given official year are published collectively in the annual report of the department.

It has been found in the experience of the department that the act is much more effectively worked when free, so far as possible, from the formal procedure suggestive of the ordinary judicial court. The taking of sworn evidence, with stenographers' reports, has been particularly discouraged as having proved far from conducive to an amicable adjustment of differences, apart from the inevitable delay associated with such procedure and leaving out of account also the very considerable expense involved in it.

The most obvious virtue of the act lies, it will be seen, in bringing the parties together before three fellow citizens of standing and repute, one at least of whom is a wholly disinterested arbiter, where a free and frank discussion of the differences may take place and the dispute may be thrashed out in such a manner as is frequently quite impossible as between the disputants directly. Grant that such discussion and investigation take place before a strike or lockout has been declared and that the board acts with ordinary discretion and tact, the chances are largely in favor of an amicable adjustment of the differences at issue. Much, of course, depends upon the chairman, and it is a *sine qua non* that he shall be a gentleman whose reputation both as a practical man and as a man of judicial bearing shall command respect on the part of the disputants and of the public generally, The experience of the Canadian act has shown that in somewhat less than half of the cases referred under the act, the parties themselves will agree on a chairman; in the remainder the appointment has been made by the Minister of Labour.

Apart from the advantage of thus bringing the parties together before a board, the act invokes the factor of publicity, and this has proved a weighty instrument in averting extreme methods on the part of employer or employees. There is, first, the publicity involved in the investigation itself; as a rule a disputant does not desire to

submit for investigation a case which is obviously unfair, and the impending investigation leads, therefore, to the abandonment of extreme propositions or contentions. There is, secondly, the publicity involved in the publication of the official report and frequently of newspaper reports of proceedings, though the latter may be limited by the action of the board. The publication of the official findings of a board on a given dispute acquaints the public with the precise circumstances of the situation, enables the public to determine the degree of reasonableness or unreasonableness of either party, and practically assures in advance the defeat of action taken by either party contrary to the findings or recommendations of the board. This has been the practically invariable experience of the operation of the act in Canada, and after three years' active operation of the measure the general feeling with regard thereto is that it has easily justified its existence and that the principles on which it is based are obtaining continually a wider recognition both in Canada and elsewhere. It will be of interest to state briefly the nature of the proceedings during these years. The total number of applications under the act from the date of its enactment, March 22, 1907, to the end of the financial year March 31, 1910, a period of three years, is eighty-two, of which thirty-five were received during the first year, twenty during the second, and twenty-seven during the third. The number of employees estimated to have been affected in the eighty-two disputes is 85,500. Of the total number of applications, thirty-four related to coal mining, six to metalliferous mining, thirty-eight to transportation and communication, one to municipal public utility, and three to industries other than mines and public utilities. The special trades or callings involved included those of coal miners, silver miners, copper miners, conductors, locomotive engineers, station agents, railway telegraphers, brakemen, firemen, baggagemen, freight clerks, machinists, mechanics (including boilermakers, blacksmiths, steamfitters and gasfitters), roundhouse employees, maintenance of way employees, carmen, freight handlers, longshoremen, lake seamen, street railway employees, teamsters, municipal employees, cotton mill operatives, and boot and shoe workers.

In a very large majority of cases the matters at issue related to hours, wages, or conditions of labor, and in only two of the cases in which wages or hours were directly concerned have proceedings

under the act failed to avert the threatened strike. It was not found necessary to establish a board in the case of every application received, the compulsory feature of the act occasionally serving to effect an adjustment without the application of the full machinery; during the three years six disputes were settled in this manner.

There have been in all during the three years indicated six instances in which strikes have occurred after the reference of disputes under the terms of the act. One of these six disputes concerned the railway industry; the other five related to the mining industry, and in four cases had to do in whole or in large part with the question of alleged discrimination against or the recognition of labour unions. The six cases in question are as follows: (1) Cumberland Railway and Coal Company, of Springhill, N. S., and its employees; (2) Canadian Pacific Railway Company and its mechanical employees; (3) Nicola Valley Coal and Coke Company, of Middlesboro, B. C., and its employees; (4) British Columbia Copper Company, of Greenwood, B. C., and its employees; (5) Dominion Coal Company, of Glace Bay, N. S., and its employees; and (6) Cumberland Railway and Coal Company, of Springhill, N. S., and its employees. In No. 1, the strike lasted from August 1, 1907, to August 31, 1907, when the employees returned to work on the conditions recommended in the report of the board. In No. 2, the strike lasted from August 5, 1908, to October 5, 1908, when the employees returned to work on the conditions recommended in the report of the board. In No. 3, the employees went on strike on April 28, during the process of establishing a board, and returned to work early in June on lines recommended by the board. In No. 4, the strike lasted from June 28 to July 24; in this case three reports were put in by the members of the board, and the settlement was on the lines substantially of the chairman's recommendations. In No. 5, the strike lasted from July 5, 1909, to April 28, 1910, when the employees returned to work on lines recommended in the report of the board, with such modifications as had been made in the same by an agreement subsequently effected with the men who had refused to participate in the strike. In No. 6, the strike was declared on August 9, 1909, and was continuing at the date of writing; it should be noted that the parties concerned in Nos. 1 and 6 are identical. During the three years, however, there have been several instances in which strikes in industries affected

by the act have been declared without reference to the law, although in most of these cases a board has been subsequently established; and in no instance where a board has been established under such circumstances has it failed to secure an adjustment. The industries affected have been usually those of coal miners or longshoremen.

Much interest has been taken in the act in foreign countries, and particularly in the United States. The question of the degree of benefit resulting from the operation of the act in Canada and of the applicability of its provisions to industrial disputes in the United States has been for several years a favorite subject of debate in high schools and colleges throughout the United States and innumerable requests have been received in the department for information on the subject. Requests for addresses from those who have been concerned in the administration of the act have also been frequently received, and Professor Adam Shortt, formerly of Queen's University, Kingston, now a civil service commissioner at Ottawa, and who was chairman of numerous boards established during the first eighteen months of the life of the act, has frequently by request addressed gatherings in Canada and in the United States as to the principles and operation of the act. It may be worth quoting at this point some sentences from an address given by Professor Shortt before the American Association for Labor Legislation at Atlantic City in December, 1908, Professor Shortt's address was not in the nature of an analysis of the act, but consisted rather of observations and deductions derived from his large experience of the practical administration of its provisions. The closing sentences of his address show concisely the character of the act and the methods by which it is induced to work most effectively:

> Considering how very seldom in their discussion of the merits of their respective cases the weaknesses of their own position and the strength of their opponents are frankly admitted, I have been agreeably surprised to find how readily in the end, even in the discussion before the board, but more particularly in the separate discussions afterwards, each side could be brought to concede the validity of their opponents' position on many points. Another encouraging feature, considering what interests are at stake, is the general calmness and good feeling which prevail in the discussions before the boards. Occasionally the temperature may exhibit a sudden rise when some tender spot is rubbed, but such occurrences are rare. Much the liveliest case we experienced, in the way of an exchange of picturesque compliments, was one in which two very respectable interna-

tional unions were seeking to establish themselves on the same base and on the same side of it with reference to a railway company.

There are many reflections suggested by the experience of the concrete cases which have been brought under the operation of the Canadian act, but only a few samples could be presented in this paper. The policy and method of the Canadian act by no means afford a certain remedy for industrial disputes. No practical man dreams that industrial disputes can be prevented from occurring, because there will always be cases where justice, unavoidably pertains to both sides. There are, however, many disputes which are chiefly due to historic prejudice, mutual ignorance and misunderstanding, and it ought to be possible to dispose of most of these and to effect a working settlement in the case of many of the others. All that one may claim for the essential features of the Canadian act is that, if tactfully handled, they provide a reasonable method of securing the maximum of concession with the minimum of compulsion.

With regard to the question of the applicability of the act to the United States, reference should be made to the special inquiry conducted on this subject by Dr. Victor S. Clark, the noted sociological writer of Washington, D. C., who visited Canada in the spring of 1908 at the special request of Mr. Roosevelt, the then President of the United States, for the purpose of making an investigation into the working of the act. Dr. Clark's report was published in the May issue of the Bi-Monthly Bulletin of the United States Bureau of Labor, where it occupied eighty pages. The report was an extremely valuable analysis of the act. Generally speaking, the findings were favorable to the measure, which had, however, it must be remembered, been in operation at the time of Dr. Clark's inquiry only one year. "So far," said Dr. Clark, "as can be judged from the experience of a single year, the Industrial Disputes Act has accomplished the main purpose for which it was enacted, the prevention of strikes and lockouts in public service industries;" and at another point the writer observes:

Apparently, it has not affected adversely the conditions of workingmen or of industries where it has been applied. It is much more applicable to American conditions than compulsory arbitration laws, like those of New Zealand and Australia, because its settlements are based on the agreement of the parties and do not prescribe an artificial wage, often illy adjusted to economic conditions. Employers and the general public in Canada, with a very few exceptions, favor the law. The working people are divided. Possibly workers do sacrifice something of influence in giving up sudden strikes, but they gain in other ways, especially in having a better alternative to a

strike than before. And as part of the general public they profit by the saving of industrial waste through strikes.

After such a law is once on the statute books, however, it usually remains, and in New Zealand, Australia and Canada it has created a new public attitude toward industrial disputes. This attitude is the result of the idea—readily grasped and generally accepted when once clearly presented—that the public have an interest in many industrial conflicts quite as immediate and important in its way as that of the conflicting parties. If the American people have this truth vividly brought to their attention by a great strike, the hopeful example of the Canadian act seems likely, so far as present experience shows, to prove a guiding star in their difficulties.

Some fifteen months later, during the summer, namely, of 1909, Dr. Victor S. Clark again visited Canada, and made a supplementary investigation of the operations of the act. His report is again published, in Bulletin No. 86, of the Department of Commerce and Labor, and, as voicing the view of an unprejudiced and careful observer, it is of special interest to note his conclusions after this second investigation. These conclusions are summed up in the following sentences:

The act seems to be gaining support with longer experience, and has very few opponents outside of labor ranks. The act has afforded machinery for settling most of the disputes that have occurred in the industries to which it applies; but in some cases it has postponed rather than prevented strikes, and in other cases strikers have defied the law with impunity. Most of the amendments proposed look toward perfecting details rather than toward revising the structure of the law. There is no likelihood that the act will be repealed, or that it will be extended to other industries or toward compulsory arbitration. The most serious danger it faces is the non-enforcement of the strike and lockout penalties in cases where the law is violated.

Under the conditions for which it was devised, the Canadian law, in spite of some setbacks, is useful legislation, and it promises more for the future than most measures—perhaps more than any other measure—for promoting industrial peace by government intervention.

It may be added that during the recent session of the Massachusetts legislature an act embodying the principles of the Canadian measure and modeled closely on its lines was before it for consideration and an active discussion on its merits took place in the American press; the measure was eventually deferred until the following session for final action, and its promoters are hopeful that it will then become law.

In the State of California also the principle of the Canadian

act has been endorsed in an elaborate report presented to the governor of that state by Mr. Harris Weinstock, a special labor commissioner, who was commissioned to investigate the labor laws and labor conditions of foreign countries generally in relation to strikes and lockouts. Mr. Weinstock's report, which is an able document of over one hundred and fifty printed pages, setting forth concisely the laws on this subject in all civilized communities, strongly recommends legislation on the lines followed by Canada, and contains the draft of a measure closely approximating the Canadian act. It is a curious fact that Mr. Weinstock had been, by independent observation and inquiry, led, as his report states, to the conclusion that the principles forming the basis of the Canadian act, of which he had at the time never heard, offered the most hopeful and practicable method for dealing with industrial disputes. The closing sentences of Mr. Weinstock's report, as bearing on this point, are specially worthy of note:

> It is generally conceded that public opinion is a most important factor in the settlement of labor disputes, more especially when they are of a character likely to affect public convenience or comfort or profit. It is rarely if ever that a strike or lockout can succeed that has public sentiment against it. The problem, however, has ever been how properly to enlighten public opinion and how to place before it the actual facts involved in a labor dispute as found by a disinterested inquirer in whom the public would have confidence.
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> With these thoughts in mind it seemed to me that an important stride would be made in the direction of industrial peace, if legislation was created calling for a public inquiry in labor disputes before they had reached the serious stage of strike or lockout.
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> I realized, however, that any legislation along such lines, in a country such as ours, must at best be experimental. While in that stage I feel that the proposed legislation should be confined to disputes likely to arise in the conduct of public utilities, since it is strikes and lockouts in these activities that, as a rule, more seriously affect the public welfare. Should the proposed legislation after a fair trial prove a success it would then be in the interest of all concerned to broaden it so that all industries might be brought under its influence.
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> This conclusion having finally been reached on my part, I forwarded it on paper while in Brussels, Belgium, in the nature of a rough draft of a proposed law.
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> On arriving in Paris a few days later I found awaiting me there a packet of printed matter sent me by the Canadian Labour Department through the courtesy of Mr. Dougherty, of the Canadian Department of Agriculture, whom some months before I had met while in Rome.

Looking over this printed matter I was surprised to find that my idea had been anticipated by the Deputy Minister of Labour of Canada, Mackenzie King, who had recently formulated and had succeeded in getting the Canadian Parliament to pass a public inquiry act. My satisfaction can be understood when I found among other documents in his collection the first annual report just issued by the Canadian Labour Department of the operation of the act which showed that ninety-seven per cent of the labor disputes submitted to a public inquiry had been amicably adjusted, and that in only three per cent of cases inquired into had there been strikes after an award was made.

Here we have a most striking illustration of the difference in effectiveness between voluntary arbitration and public inquiry. Under voluntary arbitration, having behind it all the machinery and influence of the state, there are strikes and lockouts in about ninety-seven per cent of cases, and peaceful settlement without cessation of work in about three per cent of cases. Under public inquiry we find the very first year of its trial in Canada, when at best the system could not yet have been perfected, ninety-seven per cent of peaceful settlements without cessation of work and but three per cent of strikes. Whatever doubts or misgivings I may have had as to the desirability or the practicability of the proposed public inquiry law were removed by the showing made by Canada as the result of an actual application of the principle. Surely, if in California we can, through the medium of public inquiry, adjust peacefully ninety-seven per cent of labor disputes, we shall have accomplished a most important work and shall have come as near establishing industrial peace as under our system of government is possible.

Sailing from Egypt to India, it was my good fortune to meet Mr. Mackenzie King, the framer of the Canadian public inquiry act, to whom I am indebted for valuable hints and suggestions embodied in the following recommendations, which I have the honor to submit herewith to Your Excellency.

It is understood that the Californian measure was held in abeyance for some time on account of the alleged unconstitutionality of certain of its provisions. This point has, however, been subsequently waived and the measure will now shortly be dealt with in the legislature.

An act similar in character has been introduced into the Wisconsin legislature, again after consultation with the Department of Labour of Canada, and in this case also has been held pending the consideration of the question of constitutionality. The decision in California will no doubt affect the situation regarding the act in Wisconsin, and the action of the legislature of Massachusetts will probably also have its due effect in both cases. The State of Ohio has been in active communication with the department, various

officials and public men having indicated a desire to see whether similar legislation might not be made effective in that state.

In the case of Illinois it is not understood that any definite action has been taken in the direction of legislating along the precise lines of the Industrial Disputes Investigation Act, but at a convention of officers of conciliation boards and boards of arbitration in Washington in January last, the special representative of the Governor of Illinois, in the course of a paper on Compulsory Arbitration contributed by him to the proceedings of the conference, spoke in the most cordial terms of the principle on which the Canadian act is based and strongly commended its general features.

Turning to the other side of the world, South Africa, again we find the influence of the Industrial Disputes Investigation Act in a marked degree. The legislative authorities of the Transvaal had been in close touch with the Department of Labour for a year or two regarding labour legislation generally, and in September last the Minister of Labour received the following letter from the Honorable Jacob de Villiers, Minister of Mines of the Transvaal, saying that a measure had been enacted in that country modeled closely on the lines of the Canadian act:

> I have to thank you for your letter of the 24th July last, and also for the very interesting documents which have been forwarded by Mr. Acland, the Deputy Minister of Labour.
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> I enclose a copy of the Industrial Disputes Act, as passed in the Transvaal Parliament at its last session. I regret that I am unable to forward you the official reports of the debate, as they are not at present available, but will do so later.
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> The bill, as you will see, is modeled on practically identical lines with the Canadian act, changes being made merely to suit differences in local conditions. The bill received the support of all sections of Parliament, the principle of conciliation and investigation being accepted in preference to that of compulsory arbitration.
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> In preparing and introducing the bill I was much assisted by the valuable reports published by your department.
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> I wish to tender you the thanks of my government for your kind offer of co-operation and assistance, which I greatly value and reciprocate.

It has already been indicated that in a few cases, six out of eighty-two, where, after disputes had been referred under the act the threatened lockout or strike has not been averted, the disputes in question related to union recognition. There is probably no

other question in which the parties concerned are so little susceptible to the process of conciliation or where investigation can hope to accomplish so little as in disputes of this nature. A complete surrender by one side or the other of ideas wholly divergent would appear to be the only means of settlement, and the main achievement of an inquiry under such circumstances is likely as a rule to be that of placing before the public a plain and impartial statement of the case, with findings accordingly. In the event then of lockout or strike the public is in a position to determine as to the degree of responsibility attaching to either party. Experience of the workings of the act has shown so far that the disposition of the public is to uphold the findings of a board, and that a lockout or strike declared in face of such findings fails of public support and is foredoomed as a rule to failure as a consequence. It is possible that continued experience of the present act will demonstrate to the parties to a dispute the futility of opposing the carefully considered judgment of a board of conciliation and investigation. In each case where, since the inception of the act, a strike has been declared in face of the findings of a board the strike has ended disastrously and the employees have in the end adopted substantially the recommendations made at the outset by the board which conducted the inquiry.

A word may be said, in conclusion, as to the question of penalties. As above indicated, no action has been taken by the Department of Labour or by any other department of the Dominion Government in the case of any alleged infringement of the act, either against employers or employees. There have been several convictions under the act where information has been laid by one party or other concerned in a dispute, but it will, however, be obvious from a study of the act as outlined in the preceding pages, that its success must ultimately depend less upon the question of the enforcement of penal clauses than upon the acceptance of the principle that the concentration of public opinion on an industrial dispute by means of an official inquiry is calculated to prevent either party from taking a position of manifest unfairness; while on the other hand the general good of a community, aside from the particular welfare of those concerned in a dispute, is a matter of such paramount importance as to justify the outlawing of strikes or lockouts until the dispute to which they relate has been made the subject of investigation.